# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 6305 of 2005

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**KOLI VAJABHAI SARDULBHAI - Petitioner(s)**

**Versus**

**STATE OF GUAJRAT & 2 - Respondent(s)**

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**Appearance :**

MR DJ CHAUHAN for Petitioner(s) : 1,
MR MR MENGADE ASST GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2 - 3.

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 29/08/2005**

**ORAL JUDGMENT**

1. Rule. Shri M.R.Mengade, learned AGP waives service of rule on behalf of the respondents.

2. With the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

3. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by the Additional Secretary (Appeals), Revenue Department, State of Gujarat dated 16.11.2003 / January, 2004 passed in Revision Application No.77 of 2002 in dismissing the same and confirming the order passed by the Deputy Collector, Limadi dated 30th March, 2002 and the order passed by the Collector, Surendranagar dated 20th July, 2002.

4. It appears from the record that the land in question was a new tenure land and the same came to be purchased by the petitioner on 19th March, 1971 and the necessary entry was also made in the revenue record vide Entry No.210 dated 18.3.1982 and the said entry was also certified. It appears from the record that the said transaction was without prior

permission of the competent authority as it was new tenure and restricted land, the Deputy Collector, Limbadi initiated the proceedings for breach of conditions after period of 30 years and set aside said transaction by order dated 30th March, 2002 and forfeited the land to the State Government. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Limbadi dated 31st March, 2002, the petitioner preferred the revision application before the Collector, Surendranagar and the Collector, Surendranagar vide order dated 20th July, 2002 dismissed the said revision application confirming the order passed by the Deputy Collector, Limbadi dated 30th March, 2002. Being aggrieved and dissatisfied with the order passed by the Collector, Surendranagar dated 20th July, 2002, the petitioner preferred revision application before the Secretary (Appeals), Revenue Department, State Government being Revision Application No.77 of 2002 under Section-211 of the Bombay Land Revenue Code and the revisional authority by its judgment and order dated 16.11.2003 / January, 2004 passed in Revision Application No.77 of 2002 dismissed the said revision

application confirming the orders both the authorities below. Being aggrieved and dissatisfied with the order passed by the revisional authority passed in revision application No.77 of 2002, the petitioner purchaser has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

5. Shri D.J.Chauhan, learned advocate appearing on behalf of the petitioner has vehemently submitted that when the transaction has taken place in the year 1971 and even the entry for said transaction was mutated in the revenue records on 9.2.1982 and even the entry to that effect was certified in the year 1982 and therefore, exercise of the powers by the Deputy Collector after a period of 30 years was not permissible and as held by the Hon'ble Supreme Court as well as this Court, he could not have initiated the proceedings after unreasonable period and the said aspect has not been considered by the Deputy Collector as well as the Collector as well as the Revisional Authority. He has further submitted that even the petitioner is ready and willing to pay the

premium considering the price which was prevailing in the year 1971 i.e on the day on which the transaction along with the interest at the rate of 12 % if transaction is regularized.

6. Shri M.R.Mengade, learned AGP has submitted that as the transaction in favour of the petitioner is nullity, there is no question of any time limit and the powers can be exercised at any time and therefore, the Deputy Collector has rightly exercised the powers by holding the transaction illegal and forfeiting the land to the Government. At this stage, Shri Chauhan, learned advocate appearing on behalf of the petitioner has relied upon the judgment of the Division Bench of this Court in case of VALJIBHAI JAGJIVANBHAI V. STATE OF GUJARAT reported in 2005 (2) GLH 34 wherein it is held that the powers are required to be exercised within reasonable time especially when the authorities have considerable opportunities to know about the transaction.

7. Heard the learned advocates appearing on behalf of the parties.

8. This Court while issuing the notice in the present Special Civil Application passed the following order on 8.4.2005.

> “Mr.Chauhan, learned advocate for the petitioner states that the petitioner is ready to pay the amount of premium which might be prevailing in the year 1971 together with the interest at the rate of 12 % p.a.
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> Notice returnable on 26.4.2005. Mr.Mengdey, Ld. AGP waives service of notice on beahlf of the respondent No.1. Direct service to respondent Nos.2 & 3 permitted.
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> The respondent No.2 to report to this Court regarding the approximate amount of premium prevailing int he year 1971 had the permission been granted by the State Government”

9. Even otherwise, considering the fact that the exercise of powers by the Deputy Collector was after a period of almost 30 years i.e after unreasonable period and the same was not permissible as held by the Division Bench of this Court in the aforesaid judgment VALJIBHAI JAGJIVANBHAI (Supra) and in view of the fact that the petitioner is ready and willing to pay the amount of premium which might be prevailing at the time in the year 1971 together with the interest at the rate of 12 % per annum and the matter is to be remanded to the Collector for determining the amount of premium which were prevailing in the year 1971 and directing the petitioner to pay the same along with the interest at the rate of 12 % per annum from the 1971 till the date and on payment of the same, the transaction is to be regularised. Under the circumstances, the judgment and order passed by all three authorities below are required to be quashed and set aside and the matter is to be remanded to the Collector for determining the amount of premium as stated hereinabove.

10. For the reasons stated above, the petition succeeds partly. The order passed by the Deputy Collector, Limbadi dated 30th March, 2002, the order passed by the Collector, Surendranagar dated 20th July, 2002 and the judgment and order passed by the Additional Secretary (Appeals), Revenue Department, State of Gujarat dated 16.11.2003 / January, 2005 passed in Revision Application No.77/ 2002 are hereby quashed and set aside and the matter is remanded to the Collector, Surendranagar for deciding the amount of premium which might be prevailing in the year 1971 and on determining the same, the petitioner to pay the same along with the interest at the rate of 12 % per annum from 1971 till actual payment and on said payment, it is ordered that the transaction in question be treated as regularised. The aforesaid exercise is to be completed within four months from the date of receipt of order and till then the parties are directed to maintain status quo.

Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[ M.R.Shah, J.]

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